



Judicial Response to Proposed Substance Abuse Treatment Legislation in Wisconsin: Results of Three Focus Groups

Michael Connelly, Ph.D., *Executive Director*

April 2005

WISCONSIN SENTENCING COMMISSION

101 East Wilson Street
P.O. Box 7856
Madison, WI 53707-7856
(608) 261-5049



Susan Steingass
Commission Chair

Michael Connelly, Ph.D.
Executive Director

This and other publications of the Wisconsin Sentencing Commission can be found at:
<http://wsc.wi.gov>

TABLE OF CONTENTS

Abstract	1
Purpose of Study	1
Methodology.....	1
Findings	2
Differences Among Judges	4
Summary	5

ABSTRACT

The Wisconsin Sentencing Commission held a series of focus groups with state judges in February and March 2005 to determine their likely use of and concerns about proposed substance abuse programs. The judges, from three different geographic regions, were supportive of the programs if the programs warranted their confidence in their effectiveness for offenders and for public safety. The programs would need to be long-term, systematic, and comprehensive, and the judges would need good information about their impact on the offenders and their communities. The judges felt that, with good, adequately resourced substance abuse programs, substantial numbers of offenders could be diverted from jails and revocations in the short term and from recidivism and prison in the long term.

PURPOSE OF STUDY

On January 31, 2005, Senator Carol Roessler of the Wisconsin State Senate requested that the Wisconsin Sentencing Commission (WSC) convene focus groups of state judges to determine the likely use of substance abuse treatment programs, if more widely available. Senator Roessler indicated that these focus groups would assist in identifying “the size of a pool of potential candidates who, if diverted from incarceration to treatment, would free up a significant number of prison beds, thereby providing fiscal savings that can be used to fund the expansion of treatment services” (letter to Wisconsin Sentencing Commission, January 2005). Knowing how and who judges might sentence to treatment was important in the analysis of possible bedspace impact. The end product would be proposed legislation that would, in the words of the *Wisconsin State Journal*, “promote public safety and reduce return visits to prison, using research-based treatment, graduated sanctions when offenders mess up, and electronic monitoring” (Phil Brinkman, *WSJ*, March 14, 2005).

Working with researchers from Justice Strategies, a criminal justice research group involved in the proposed legislation, WSC staff planned and held three focus groups of state judges between February 23 and March 7. The first was held in Appleton with judges from the state’s Fox River Valley area, the second in Milwaukee with Milwaukee County judges, and the last in Barron with judges from the northwestern and west-central portion of the state. The selection of these jurisdictions provided a cross-section of urban, mid-urban, and rural communities in Wisconsin. The staff received substantial assistance from the district chief judges and their court administrators from state districts XIII, I, and X, respectively.

METHODOLOGY

The focus group sessions were semi-structured with common questions, although the discussions were allowed to evolve. Each group contained ten judges. WSC staff asked the coordinating district officials to ensure that the participating judges reflect the philosophical and experiential nature of the jurisdictions. Each group included the district chief judge from that jurisdiction, and the Barron group also had the district chief judge from District VII. The sessions were not recorded but notes were taken by at least two non-participants in all groups, and by three in two of the groups. The notes were transcribed and disseminated for concurrence among WSC staff and Justice Strategies researchers. The sessions lasted 90 minutes each.

The discussions were structured around the following four basic questions:

1. *What type of offender might judges consider for treatment rather than confinement if they had confidence that the treatment would be provided? (In the first session in Appleton, the question was more pointed, focusing on who might be diverted from prison. Resulting discussion made clear that the characteristics of such offenders would be better solicited with more nuanced questioning.)*
2. *What did the judges want to see in treatment programs, and what kind of feedback would give them the necessary information and confidence to be willing to use them?*
3. *If such treatment programs were made available, but in five years the consensus was that they had failed, what did the judges think would be the reasons for the failure?*
4. *If such treatment programs were made available, what proportion of offenders (on either initial sentence or on subsequent revocations) would likely be diverted from prison?*

Related topics that came up during questioning and responses involved the need for early assessment of offenders for substance abuse treatment and other needs, use of the state's "extended supervision" provision in sentencing, collateral effects of policies such as revocation of driver's licenses for convicted offenders, drug treatment courts, and the effectiveness of current probation and parole practices.

FINDINGS

The judges in these focus groups had much in common in their responses to the questions and the subsequent discussions, including:

- The judges did not believe that they were currently sending many offenders to prison who did not belong there. While their estimate of the likely impact on sentencing varied by region, judges in all three focus groups felt that having more treatment options available would be very helpful and that they would use them if confident of their effectiveness. All saw collateral impacts of substance abuse offenses on other offending, such as burglaries, robberies, fraud, etc.
- The judges distinguished between good risks and bad risks for treatment using characteristics common in the research literature. Good risks were offenders with education, jobs, steady home lives, good support networks, and nonviolent and/or minimal prior records; bad risks were those without these qualities. Drug offenders who were also committing burglaries, robberies and weapons offenses were more likely to go to prison than those with simple possession. The judges agreed that there were two types of drug dealers—those in it for the money and those who sold so they could use—and that they tended to go harder on "real dealers" than the "five-and-dime users" who they see with much greater frequency. The judges disagreed about the effectiveness of treatment on offenders who had to be forced into it.
- The judges were supportive of "wrap-around" capabilities of treatment programs, such as those available at the Community Justice Resource Center in Milwaukee. These programs would work on literacy, parenting, and employment skills as well as basic treatment and provide constant and effective supervision of offenders throughout their term. Milwaukee judges particularly emphasized the importance of preparing offenders for gainful employment.
- The judges believed that waits for treatment were currently too long. Several said they ended up imposing lengthier prison or probation terms simply in order to ensure that offenders receive

meaningful treatment. In other words, prison bedspace could be freed if the judges could be given accurate information about how much time was really required for the offender to receive treatment and if those processes could be improved. Relatedly, the judges felt that, with the delays in getting treatment, the connection between the conviction and the subsequent remedy became too tenuous to be effective. Moreover, if offenders are out on legal status and too much time elapses, the potential for more offending is great.

- The judges also believed that treatment should be months, not weeks, that relapses should be expected before final recovery, and that graduated sanctions should be available to respond to relapses to avoid the “either-or” choice of prison when considering revocation. Some noted that they might use jail simply as a means to enforce abstinence long enough to set up adequate treatment.
- The judges saw the “extended supervision” (ES) component of sentences under the state’s Truth in Sentencing as equivalent to parole, with the same problems of overcrowded caseloads and inadequate supervision. Some also felt that the long-term effect of ES as currently implemented would make the problems worse in the future since current ES sentences are on average as long as or longer than confinement time, unlike the old parole.
- The judges welcomed good information about the effectiveness of treatment on both the individual and program levels. Some advocated interviews or focus-groups with offenders to find out why some succeeded and others failed while some wanted more information about successful programs nationally and locally. The judges felt that treatment programs needed a good evaluation component.
- The judges felt that, on average, women offenders were somewhat more receptive to treatment than men and that programs tailored to help them maintain contact with their families would be productive.
- The judges believed that the collateral effects of many current policies were counterproductive to successful outcomes. In particular, they singled out current requirements to revoke driver’s licenses because they made it difficult for the offenders to retain jobs and even to get to mandated treatment. Some indicated that they saw very few later instances of offenders being involved in vehicular offenses other than driving without a license and that the benefits of repealing the requirement would far outweigh the costs. Another example was the impact of more funding for law enforcement to fight drugs without putting more money into the resulting prosecution and trials. Some judges also noted that they would appreciate the authority to reduce felonies to misdemeanors following successful treatment as a reward to improve the offender’s conviction record.
- The judges felt that imposing treatment as a condition of probation frequently fails because of inadequate provision of resources to keep caseloads of supervisors low enough to make oversight meaningful. One judge, however, asked that an explicit definition of program “failure” be provided in any legislation since, with the difficulty of breaking addiction, even a small percentage of successes could be considered good and cost-effective. They expressed concern that the immediate effect of more treatment programs would increase costs in the short term before having their long-term benefits in reduced crime and need for bedspace. Similarly, some judges were concerned that programs would become “unfunded mandates” on counties. One judge also advocated more funding for research into possible pharmaceutical remedies for substance abuse problems as having a potentially major effect on future costs. Others saw benefits in state authorization of regional efforts to allow the multiple jurisdictions dealing with similar drug problems to pool their resources.

The judges were uniformly appreciative of the legislature's interest in judicial input prior to the consideration of legislation as potentially important as was being considered. They indicated they would make good faith efforts to make meaningful substance abuse treatment policy effective.

DIFFERENCES AMONG JUDGES

Although the judges in all three areas were in general agreement on most points, there were substantive differences among them. Among these were:

- When asked to estimate the likely impact on sentencing of making better treatment and supervision available, judges from the Fox River Valley and the NW/West Central gave different answers than judges from Milwaukee. Outside Milwaukee, most judges said that property and low-level drug offenders are generally not sentenced to prison unless they have long records – two or more prior felonies, depending on the crime – or a history of violence. In Milwaukee, by contrast, many judges said offenders with more limited criminal history are often incarcerated because credible alternatives are lacking. According to Justice Strategies, preliminary analysis of DOC data matches the judges' feedback: offenders with limited criminal histories are more likely to be sentenced to prison in Milwaukee than elsewhere.
- The judges emphasized different substance abuse problems afflicting their jurisdictions. The Fox River Valley judges felt that alcohol problems were their worst and advocated treatment for offenders well before the fifth and subsequent (i.e. felony) DUI conviction. The NW/West Central judges faced dramatic increases in methamphetamine abuse at levels not yet seen in the rest of the state even though marijuana was still the most prevalent drug. Milwaukee judges saw a wider and more even range of substance abuse, feeling that drugs drove basically all their crime. This indicates that "one size fits all" policy would provide uneven fits and that policy, if statewide, should be broadly based or allow for local tailoring.
- The judges in the different jurisdictions had different perspectives of and confidence in the performance of their area probation and parole (P&P) services. While the judges uniformly sympathized with the P&P agents for their large caseloads and poor resources, they expressed differing opinions on their effectiveness. Only the NW/West Central judges indicated that they had positive relationships with their local agents (and had in fact applied for a grant in cooperation with those agents). The Fox River and Milwaukee judges were skeptical of the effectiveness of their P&P systems and indicated that they sentenced offenders to prison in part due to their lack of confidence in those systems. Efforts to improve the levels of trust and confidence in P&P among the judges could conceivably see long-term payoffs in more and better community sentencing.
- The judges also differed in their enthusiasm for drug treatment courts. The Fox River and the NW/West Central judges were very interested in developing them, and several of the judges indicated having visited such courts out of state and/or receiving training for potential operation in their jurisdictions. Milwaukee judges, on the other hand, were far less enthusiastic, primarily because of their lack of confidence and trust that the levels of resources and supervision necessary for effective drug treatment courts would be available.
- The judges had a hard time putting estimates on the proportion of offenders who might be diverted from prison if effective substance abuse treatment programs were available. Some judges said they only send deserving offenders to prison now, but all agreed that the most large-scale drug dealers end up going through federal courts. Others indicated that, if good

treatment were at hand, they might send most or all of their drug offenders through those programs. While judges in all three focus groups expressed the belief that state investments in treatment, supervision and wrap-around services would produce savings, they differed in how the savings might be achieved. In the Fox River Valley and NW/West Central, judges suggested that better treatment and supervision would help produce medium- to long-term savings by reducing revocation and recidivism rates, but that the short-term impact would be a reduction in county jail populations. The NW/West Central judges estimated a cost of \$6100 per offender for an 18-month course of treatment in their jurisdiction, much less than the equivalent cost of prison for the same period. In Milwaukee, on the other hand, judges suggested that significant numbers of offenders would be diverted from prison if credible alternatives existed, which would have a much more direct impact on the prison population. As this county is the largest contributor to the state's prison population, this indicates that, if Milwaukee could receive enough demonstrably effective treatment options, substantial prison diversion might occur. Justice Strategies is currently working to integrate feedback from the focus groups with DOC data in order to estimate the impact of proposed legislation expanding the availability of treatment services on the state's prison population. Overall, the judges offering their predictions of how many offenders they themselves would divert said between 17% and 50%. A range of 20%-40% would seem a reasonable rule of thumb, consistent with findings in other states.

SUMMARY

The judges from these three focus groups, representing three different regions of the state and a cross-section of views and experience, agreed that meaningful and clearly effective substance abuse treatment programs would be well received. Their comments indicate that, in their view, these programs should last for months, not weeks, and should perform a range of functions designed to return the offender to a productive, tax-paying role in their communities. They should be provided adequate resources to allow consistent and constructive supervision, and the judges would need to receive accurate, regular information about outcomes on individual and program levels. Without meaningful treatment options that are effective for the offender while protecting public safety, the judges will continue to sentence as they have, with similar results for future corrections.